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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

XIAODONG HU,

Plaintiff and Appellant,

v.

JERRY HA,

Defendant and
Respondent.

B289222

(Los Angeles County
Super. Ct. No. BC631817)

APPEAL from judgment of the Superior Court of Los Angeles County, Rafael Ongkeko, Judge. Affirmed.

Law Office of Roger C. Hsu, Roger C. Hsu and Joseph M. Liu, for Plaintiff and Appellant.

Jerry Ha, in pro. per., for Defendant and Respondent.

Plaintiff and appellant Xiaodong Hu appeals from a judgment following a bench trial in this action for implied contractual indemnity. The trial court awarded a portion of the damages that Hu had sought from defendant and respondent Jerry Ha. On appeal, Hu contends that the trial court found the parties were equally liable for Hu's damages, but incorrectly apportioned damages. We find the damages were calculated correctly and there was no abuse of the court's discretion. Therefore, we affirm.

FACTS

Ha lives in the Monterey Park area of Los Angeles. He filed a fictitious name statement to do business as 4-D Hollywood (4DH) at his address in Monterey Park. At some point, Ha met Hu.

Hu lives in China and is president of China Hollywood Si Wei Dong Man. In February 2010, Hu registered 4-D Hollywood, Inc. (4-D Inc.), in California, with Ha's permission to use the name. Ha's address was initially listed as 4-D Inc.'s principal place of business, but the address was later changed. Hu is the chief executive officer of 4-D Inc. and a shareholder, but Ha is not a shareholder. Hu also applied for a trademark in China for the trade name 4-D Hollywood.

In early 2011, Hu met Ji-Cai Su.¹ Ji-Cai asked Hu to find a resident in Southern California to provide housing and related services that would enable his 17-year-old son Dong-Qi Su to study in the United States. Hu contacted Ha, who had previously accepted a student referred by Hu. In an e-mail dated March 31, 2011, Ha stated that it would cost 3 million renminbi for Dong-Qi's tuition and expenses, which was the equivalent of approximately \$455,000.

A written agreement was signed in May 2011. The parties to the agreement were Ji-Cai and Hu. The agreement was signed by Ji-Cai, Hu, and Ha, who is referred to in the agreement as Hu's "friend." Ji-Cai authorized Hu to handle affairs to enable his son to study in the United States. He authorized Hu and Ha to serve as Dong-Qi's custodians and agents for handling Dong-Qi's studies in the United States. Hu agreed to process the formalities for Dong-Qi's travel and studies in the United States. The plan was for Dong-Qi to become proficient in English, then enroll in undergraduate studies at the University of Southern California (USC) School of Cinematic Arts. Dong-Qi would live with Ha during his studies and receive food, accommodation, professional tutoring, and job referrals after graduation. The primary costs would be school tuition, food, and accommodation at Ha's house. Dong-Qi's undergraduate studies were not to exceed five years. Ha would receive two

¹ Because more than one participant has the last name Su, they will be referred to individually by their first names for ease of reference.

payments totaling \$300,000. Hu would transmit to Ha the first installment of \$100,000 upon execution of the agreement. Hu would pay to Ha the second installment of \$200,000 within one week after Dong-Qi's successful admission to the school. A full refund would be made if the plan failed due to "circumstantial reasons."

Ha had other Chinese students living with him as well. Ji-Cai transferred funds to Hu, who did not keep any portion of the \$300,000 provided by Ji-Cai. In five transactions in August and September 2011, Hu wired a total of \$299,869.50 (the promised \$300,000 less bank fees for wiring) in United States currency to an account with Ha's address, which was held in the name of Ha and 4D Hollywood, and controlled by Ha. Ha made arrangements for Dong-Qi's travel to the United States, including his visa and language school applications. In October 2011, Ha provided receipts for the five transactions to Ji-Cai, stated that Hu's part was complete, and provided information about Dong-Qi's progress.

Ha complained to Hu that \$300,000 was not enough to pay for five years of expenses and tuition. In October or December 2011, Hu advanced an additional \$20,000 from his own funds and obtained \$20,000 from Ji-Cai after he returned to China. The total amount Ji-Cai paid for his son's education related expenses was \$320,000.

Dong-Qi stayed with Ha for approximately nine months before returning to China in May 2012. In March 2013, USC denied admission to Dong-Qi. Dong-Qi decided to

attend the University of Illinois. Over the summer, Dong-Qi stayed with Ha for approximately one week to collect his belongings.

In 2014, Ji-Cai filed an action in China against Hu for a refund of \$300,000. Ha signed a declaration, dated April 3, 2015, which Hu submitted in the proceedings in China. Ha declared that he had received \$300,000 from Hu, as requested by Ji-Cai, to provide for Dong-Qi's tuition and living expenses. Hu was an intermediary only. Hu's performance under the agreement was complete when he transferred \$300,000 from Ji-Cai to Ha on September 27, 2011. Dong-Qi had spent more than one year living with Ha and attending language school at USC. The agreement had not terminated and was still being performed. Hu lost the case in China filed by Ji-Cai: the court there ordered Hu to refund \$30,000 in United States currency and \$1.7 million in Hong Kong dollars, which was equivalent to a total judgment of approximately \$240,000. Hu was also ordered to pay the costs of litigation. Hu filed an appeal, which the appellate court in China denied, and Hu was ordered to pay additional litigation costs. The total amount that Hu paid was equivalent to \$290,657.61 in United States dollars.

PROCEDURAL BACKGROUND

On August 25, 2016, Hu filed a complaint against Ha, and an amended complaint in November 2016, for breach of contract and declaratory relief. Hu alleged Dong-Qi's

admission to USC was a condition precedent to Ji-Cai's obligation to pay for living expenses and tuition. Dong-Qi's rejection made it impossible to perform the contract and excused Ji-Cai's performance. In the complaint, Hu sought a refund of \$240,000 that was not spent under the contract. Hu also sought a declaration that Ha was obligated to pay the judgment in China, as well as the litigation costs that Hu had incurred. He attached vouchers showing the amounts that he paid to satisfy the Chinese judgment.

A three-day bench trial began on November 15, 2017. In closing argument, Hu's counsel stated that Hu was seeking \$290,657.61, which was equivalent to approximately 1,927,060 renminbi. The trial court granted Hu's oral motion to amend the complaint to conform to the proof at trial by adding causes of action for equitable indemnity and implied contractual indemnity. The trial court found that the written agreement signed by Ha was valid, and he received the funds stated. The provision requiring a full refund was ambiguous, but the reasonable interpretation was that a full refund of unused funds was required. Full payment for five years was \$300,000, which was approximately \$60,000 per year. The four years of unused expenses totaled \$240,000. Ha did not provide any receipts for funds expended on behalf of Dong-Qi.

The trial court found Ha should return the funds that did not rightfully belong to him, and most of the money that Ha received should have been returned. Hu paid more than his share to satisfy the Chinese judgment. The court also

found, however, that while the agreement required payment of \$100,000 upon execution, the second installment of \$200,000 was not to have been paid until after Dong-Qi received admission to USC. Hu breached the agreement by advancing the second payment when Dong-Qi had not been admitted. The court found Ha lacked credibility or any defense. Although the court acknowledged Hu's damages were \$290,657.61, the court found equity required Hu to bear responsibility for half of his damages, because he released the majority of the funds before the date provided in the agreement. The court found Hu was equally liable. On February 1, 2018, the trial court entered judgment in favor of Hu in the amount of \$145,328.80, plus costs. Hu filed a timely notice of appeal from the judgment.

DISCUSSION

Standard of Review

“After a trial court has exercised its equitable powers, the appellate court reviews the judgment under the abuse of discretion standard. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256.) [¶] “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citation.] [¶] “The abuse of discretion

standard . . . measures whether, given the established evidence, the act of the lower tribunal falls within the permissible range of options set by the legal criteria.” (*Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th 1076, 1089.) The scope of the trial court’s discretion is limited by the law governing the subject of the action taken. (*Ibid.*) An action that transgresses the bounds of the applicable legal principles is outside the scope of the trial court’s discretion and, therefore, is deemed an abuse of discretion. (*Ibid.*) [¶] In applying the abuse of discretion standard, we determine whether the trial court’s factual findings are supported by substantial evidence and independently review its legal conclusions. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230.)” (*Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 482.)

Implied Contractual Indemnity

Hu does not dispute the trial court’s ruling that he and Ha each bear 50 percent of the responsibility for Ji-Cai’s damages. Hu contends that, in implementing this ruling, the trial court did not apportion the dollar amount of damages between them correctly. Specifically, Hu argues that the trial court intended the parties to share responsibility equally, but the amount awarded was based solely on the judgment against Hu without taking into account the funds that Ha received from Ji-Cai. Hu’s

contention is incorrect, whether it is characterized as a matter of independent review, substantial evidence, or an abuse of discretion.

“Unlike subrogation, in which the claimant stands in the shoes of the injured party, ‘The basis for the remedy of equitable indemnity is restitution. “[O]ne person is unjustly enriched at the expense of another when the other discharges liability that it should be his responsibility to pay.” [Citation.] [¶] California common law recognizes a right of partial indemnity under which liability among multiple tortfeasors may be apportioned according to the comparative negligence of each.’ [Citation.] The test for indemnity is thus whether the indemnitor and indemnitee jointly caused the plaintiff’s injury.” (*AmeriGas Propane, L.P. v. Landstar Ranger, Inc.* (2010) 184 Cal.App.4th 981, 989.)

“[W]e now recognize there are only two basic types of indemnity: express indemnity and equitable indemnity. [Citation.] Though not extinguished, implied contractual indemnity is now viewed simply as ‘a form of equitable indemnity.’ [Citation.]” (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1157 (*Prince*).) “The right to implied contractual indemnity is predicated upon the indemnitor’s breach of contract, ‘the rationale . . . being that a contract under which the indemnitor undertook to do work or perform services necessarily implied an obligation to do the work involved in a proper manner and to discharge foreseeable damages resulting from improper performance absent any

participation by the indemnitee in the wrongful act precluding recovery.’ [Citations.] ‘An action for implied contractual indemnity is not a claim for contribution from a joint tortfeasor; it is not founded upon a tort or upon any duty which the indemnitor owes to the injured third party. It is grounded upon the indemnitor’s breach of a duty *owing to the indemnitee* to properly perform its contractual duties.’ [Citation.]” (*West v. Superior Court* (1994) 27 Cal.App.4th 1625, 1633.) “[A]n implied contractual indemnity claim, like a traditional equitable indemnity claim, is subject to the . . . rule that a party’s liability for equitable indemnity is based on its *proportional share of responsibility* for the damages to the injured party.” (*Prince, supra*, at p. 1165.)

Ji-Cai’s damages were calculated in the Chinese proceedings based on the amount paid to Ha under the written agreement. The Chinese judgment orders a partial refund of the money advanced. Hu alone satisfied the Chinese judgment. The trial court in this case found that Hu and Ha were equally responsible for Ji-Cai’s damages, a determination of relative responsibility that Hu does not contest. Because Hu paid the portion of the Chinese judgment that discharged a liability that should have been Ha’s responsibility to pay, ordering Ha to pay half the amount of the Chinese judgment to Hu resulted in the parties bearing equal liability for Ji-Cai’s damages. The trial court’s order satisfied the restitutionary basis of equitable indemnity. The trial court did not abuse its

discretion by calculating the dollar amount as one-half of the Chinese judgment. The judgment must be affirmed.

DISPOSITION

The judgment is affirmed. Respondent Jerry Ha is awarded his costs on appeal.

MOOR, J.

WE CONCUR:

RUBIN, P. J.

BAKER, J.